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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-821

EDWARD V. HANRAHAN, RICHARD S. JALOVEC, JAMES MELTREGER, and SHELDON SOROSKY,

Petitioners,

VS.

IBERIA HAMPTON, Administratrix on behalf of the Estate of Fred A. Hampton, Deceased, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
ISSUES PRESENTED	4
STATEMENT OF THE CASE	5
ARGUMENT:	
I.	
The Decision Of The Court Of Appeals Evidences A Conflict Among The Circuits As To The Scope Of Prosecutorial Immunity	8
II.	
The Decision Of The Court Below Has Eliminated, In Toto, Prosecutorial Immunity Under The 1871 Civil Rights Act	11
III.	
Substantial Public Policy Considerations Require A Determination By This Court As To The Scope Of Prosecutorial Immunity Under The 1871 Civil Rights Act	13
CONCLUSION	17

TABLE OF AUTHORITIES

Cases

Bauers v. Heisel, 361 F.2d 581 (3rd Cir. 1966), cert. den'd 386 U.S. 1021, 87 S.Ct. 1367 (1967) 8, 9

Bradley v. Fisher, 80 U.S. (13 Wall) 335 (1871) .. 9, 12, 13

Cawley v. Warren, 216 F.2d 74 (7th Cir. 1954) 12

F.T.C. v. Flathill Products, Inc., 389 U.S. 179, 88 S.Ct. 401 (1967) 10

Gaito v. Strauss, 249 F.Supp. 923 (W.D.Penn. 1966) 15

Hampton v. City of Chicago, 339 F.Supp. 695 (N.D.Ill. 1972) 14

Kostal v. Stoner, 292 F.2d 492 (10th Cir. 1961) 9, 12

Lewis v. Brautigam, 227 F.2d 124 (5th Cir. 1955) 9

Littleton v. Berbling, 468 F.2d 389 (7th Cir. 1972) cert. granted 409 U.S. 1053 (1973) 10

Madison v. Purdy, 410 F.2d 99 (5th Cir. 1969) 9

Mitchell v. Kentucky Finance Co., 59 U.S. 179, 88 S. Ct. 401 (1967) 10

Moore v. Buck, 443 F.2d 25 (3rd Cir. 1971) 8

Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967) 8, 9

Robichaud v. Ronan, 351 F.2d 533 (9th Cir. 1965) 10, 13

Tenney v. Brandhove, 341 U.S. 367, 71 S.Ct. 783 (1971) 9

Other

Civil Rights Act
42 U.S.C. §1981 ..... 3, 8
42 U.S.C. §1983 ..... 3, 9
42 U.S.C. §1985(3) 3

Comment, 66 Harv.L.Rev. 1285 (1953) 13

Wright, *Duties of a Prosecutor*, 35 Conn. B.J. 293 (1959) 14

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, Edward V. Hanrahan, former State's Attorney of Cook County, Illinois, Richard S. Jalovec, and Sheldon Sorosky, Former Assistant State's Attorneys of Cook County, Illinois, and James Meltreger, Assistant State's Attorney of Cook County, Illinois, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on August 24, 1973, reversing a ruling of the United States District Court for the Northern District of Illinois, which had dismissed several complaints against them.

Petitioners respectfully submit this petition in accordance with Rules 21, 22 and 23 of the Rules of the Supreme Court of the United States to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and that substantial federal questions are presented.

OPINIONS BELOW.

The decision of the United States Court of Appeals for the Seventh Circuit which is the subject of this appeal has not yet been reported. A complete copy of this decision in slip opinion form is attached to this petition as Appendix "A" pursuant to Supreme Court Rule 23(i).

The decision by the United States District Court in this same cause is reported at 339 F. Supp. 695 (N.D. Ill. 1972) and is attached as Appendix "B".

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 24, 1973 and this petition for certiorari was filed within ninety (90) days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(i).

The jurisdiction of the District Court was invoked under Amendments I, IV, V, VIII, IX, XIII and XIV of the United States Constitution, as well as under 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986 and 1988 and 28 U.S.C. §§ 1331 and 1343. Diversity jurisdiction was invoked by plaintiff Verlina Brewer as a resident of the State of Michigan.

STATUTES INVOLVED.

42 U.S.C. §1981

Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. §1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1985

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons

within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

ISSUES PRESENTED.

Whether the decision of the Seventh Circuit that the planning of a "Raid" was beyond the scope of the quasi-judicial immunity of a prosecutor so as to require him to submit to trial on a Civil Rights Complaint;

Whether said decision is in conflict with the decisions of other Circuits, merely requiring a final adjudication of the basic issue of the scope and extent of prosecutorial immunity by this Court;

Whether the ultimate impact of the Seventh Circuit's opinion is the total elimination of prosecutorial immunity;

Whether substantial public policy considerations require a determination of the scope of prosecutorial immunity.

STATEMENT OF THE CASE.

This case arises from the events surrounding the execution of a search warrant on December 4, 1969 by certain Chicago policemen (who were assigned to the office of the State's Attorney of Cook County, Illinois.) at an apartment occupied by members of the Black Panther Party. In the ensuing activity following entry to the apartment located at 2337 West Monroe Street in Chicago, Illinois, Fred Hampton and Mark Clark were killed and Verlina Brewer, Ronald Satchel, Blair Anderson and Brenda Harris (all inhabitants of the apartment at the time of the entry of the police) were wounded.

Four separate complaints were filed and consolidated by the District Court on October 22, 1971. All of these suits were civil actions for damages alleging violations of the Federal Civil Rights Act (42 U.S.C. §§1981, 1983, and 1985(3)).

Those who were sued included seven of the fourteen Chicago police officers who participated in the raid; certain police officers who were assigned to the Internal Inspections Division and the Crime Laboratory of the Chicago Police Department; the Mayor of the City of Chicago; the Superintendent of the Chicago Police Department; petitioner Hanrahan as State's Attorney of Cook County; petitioners Jalovec, Sorosky and Meltreger as Assistant State's Attorneys of Cook County; the City of Chicago as employer of the Chicago policemen; and the County of Cook as employer of State's Attorney Han-

rahan and his three assistants who were named as defendants.

Allegations made by the plaintiffs included the claim that the police illegally entered their apartment and assaulted them with deadly weapons. With specific reference to petitioners Hanrahan and Jalovec it was alleged that they planned the "raid" and agreed to the use of deadly force against Hampton and the other located in said apartment. Furthermore, it was alleged that all the defendants engaged in a conspiracy to cause the false arrest and imprisonment and the commencement of the unfounded prosecution of the surviving plaintiffs. Cook County and the City of Chicago were joined as defendants under the doctrine of *respondeat superior.*

On February 3, 1972, United States District Court Judge Joseph Sam Perry granted defendants' motions to dismiss as to all of the actions against all of the plaintiffs except those 7 police officers who were involved in the execution of the search warrant at the Black Panther apartment. (Judge Perry's memorandum opinion is herein included as Appendix "B".)

This decision was reversed on most issues by the United States Court of Appeals for the Seventh Circuit (See Appendix "A"). With specific reference to Hanrahan and Jalovec the Court held that "at the very least they (the complaints) charge that Hanrahan and Jalovec planned a raid in order to obtain evidence of criminal activity" which was beyond the scope of their quasi-judicial or prosecutorial immunity. Furthermore, the Court ruled that the charges of conspiracy to cause an illegal arrest and imprisonment against Hanrahan and Jalovec were

sufficient under both §1983 and §1985(3) to withstand a motion to dismiss.

The Court also reversed the dismissal of conspiracy charges which were also made against petitioners Sorosky and Meltreger, based upon the allegation that they, along with the defendant policemen from the Internal Inspections Division and the Crime Laboratory, conspired to conceal the fact that there was no basis for arresting, holding or prosecuting the plaintiffs. The specific allegation relating to Sorosky and Meltreger was that they helped to edit the questions and answers prepared for the officers who had participated in the search in order to maintain consistent testimony. This alleged conduct was seen to exceed the scope of their quasi-judicial immunity as prosecutors.

The Court further ruled that the Civil Rights claims against petitioner Cook County and the City of Chicago were properly dismissed because these defendants were not "persons" within the meaning of the Civil Rights Act. However, the Court did uphold the jurisdiction of the District Court over the state law claims in common law tort of assault and battery, false imprisonment and malicious prosecution of plaintiff Brewer because of the existence of diversity of citizenship. In so ruling, the Court rejected the contention that the Illinois Local Governmental and Governmental Employees Tort Immunity Act (Ill.Rev.Stats. ch. 85, §1-101 *et seq.*) immunizes municipal corporations from liability if their agents are guilty of wilful and wanton misconduct.

ARGUMENT.

I.

THE DECISION OF THE COURT OF APPEALS EVIDENCES A CONFLICT AMONG THE CIRCUITS AS TO THE SCOPE OF PROSECUTORIAL IMMUNITY.

Petitioners Hanrahan and Jalovec were found by the Seventh Circuit to have acted outside the scope of their quasi-judicial (or prosecutorial) immunity as afforded under the 1871 Civil Rights Act, 42 U.S.C. §1981 *et seq.* Specifically, the action complained of is that the above petitioners planned, with police officers, a raid conducted "under color of state search warrant." The Court found that participation in evidence gathering activities was investigatory in nature, and as such, was not clothed with immunity.

Although this Court has clearly held that Congress, through the enactment of the 1871 Civil Rights Act, 42 U.S.C. §1981 *et seq.*, did not intend to abolish all common law immunities, *Pierson* v. *Ray*, 386 U.S. 547, 554-555, 87 S.Ct. 1213, 1218 (1967), the question of the scope of prosecutorial immunity has not been ruled upon in this forum. The various Courts of Appeal have, however, filled this void with decisions which are in conflict with one another.

The Third Circuit, for instance, has formulated a "jurisdictional" test whereby a prosecutor enjoys official immunity except where it is shown that the alleged conduct is clearly outside the scope of his jurisdiction. *Moore* v. *Buck*, 443 F.2d 25, 26 (3rd Cir. 1971), *Bauers*

v. *Heisel,* 361 F.2d 581, 590 (3rd Cir. 1966), cert. denied 386 U.S. 1021, 87 S.Ct. 1367 (1967).[1] It should be noted that the jurisdictional test is consistent with this Court's decision in *Bradley* v. *Fisher,* 80 U.S. (13 Wall.) 335, 351 (1871) wherein it was held that a judge is immune from civil liability except when acting in a clear absence of all jurisdiction over the subject matter. Moreover, the consistency remains under this Court's decisions dealing with immunity under the 1871 Civil Rights Act. In *Pierson* v. *Ray,* 386 U.S. 547, 554, 87 S. Ct. 1213, 1218 (1967), this Court ruled that §1983 did not abolish wholesale all common law immunities and that the immunity pronounced in *Bradley* v. *Fisher, supra,* would remain intact. And in *Tenney* v. *Brandhove,* 341 U.S. 367, 378, 71 S.Ct. 783, 789 (1971), this Court held that members of an investigative legislative committee are immune from civil liability under §1983 when the committee acts within its province and has not exceeded the bounds of legislative power.

Similarly, the Tenth Circuit has ruled that a prosecutor enjoys immunity, as does a judge, when "performing his official duties," *Kostal* v. *Stoner,* 292 F.2d 492, 493 (10th Cir. 1961), a standard akin to the jurisdictional test of the Third Circuit.

The Fifth Circuit, however, has adopted a slightly stricter twofold standard, granting immunity unless it is demonstrated that the prosecutor acted both outside the scope of his jurisdiction and without authorization of law. *Madison* v. *Purdy,* 410 F.2d 99, 101 (5th Cir. 1969), *Lewis* v. *Brautigam,* 227 F.2d 124 (5th Cir. 1955).

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[1] This Court, in *Pierson,* cited the holding in *Bauers* v. *Heisel, supra,* with approval. 87 S.Ct. at 1218 n.9.

The most restrictive test is that offered by Seventh Circuit in the instant case, where the Court, relying on its earlier decision in *Littleton* v. *Berbling*, 468 F.2d 389 (7th Cir. 1972), *cert. granted*, 409 U.S. 1053 (1973), ruled that prosecutorial conduct described as quasi-judicial would warrant immunity, while investigatory activities would not. This standard was originally propounded by the Ninth Circuit in *Robichaud* v. *Ronan*, 351 F.2d 533 (9th Cir. 1965), wherein the court noted that where prosecutors committed or authoritatively directed the commission of acts which are ordinarily related to police activity, as opposed to judicial activity, the prosecutor would lose his immunity.

It is noteworthy that the instant case is the first case in which a Circuit Court has specifically found a prosecutor's activity to be outside the scope of his immunity because it was investigatory in nature. In *Robichaud*, the Ninth Circuit directed the trial court to make a determination as to the nature of the acts complained of. 351 F.2d at 537. Similarly, in *Littleton*, the Seventh Circuit remanded, directing the trial court to reconsider the immunity issue, by way of an amended pleading and in light of the quasi-judicial/investigative test. 468 F.2d at 411.

It is abundantly clear that a substantial conflict does exist as to the scope of prosecutorial immunity under the 1871 Civil Rights Act. This Court has felt compelled to grant a writ of certiorari for the purpose of resolving conflicts between circuits. *Mitchell* v. *Kentucky Finance Co.*, 59 U.S. 290, 291, 79 S.Ct. 756 (1959); *F.T.C.* v. *Flathill Products, Inc.*, 389 U.S. 179, 181, 88 S.Ct. 401 (1967). The import and magnitude of the conflict is evident, and

the issuance of a writ is the only manner in which the present conflict can be resolved.

II.

THE DECISION OF THE COURT BELOW HAS ELIMINATED, IN TOTO, PROSECUTORIAL IMMUNITY UNDER THE 1871 CIVIL RIGHTS ACT.

Two of the complaints in the instant case additionally allege that petitioners Hanrahan, Jalovec, Meltreger, and Sorosky (the State's Attorney and Assistant State's Attorneys of Cook County, respectively) conspired, with others, for the purposes of falsely arresting, imprisoning, and initiating an unfounded prosecution against the plaintiffs.[1]

Although the Seventh Circuit noted that the allegations as against Sorosky and Meltreger were "somewhat tenuous", (Appendix at p. 9a) the court, without passing upon the question of immunity ruled that all must stand trial.

The thrust of the Complaints can only be that the petitioners conspired to initiate an unfounded prosecution, for arrest and imprisonment are mere incidents of

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[1] Additionally two complaints alleged that petitioners Jalovec, Sorosky, and Meltreger revised, and approved the questions to be asked various policemen and advised the policemen as to the proper answers to be given. (Johnson Complaint, paragraph 69 n and o; Brewer Complaint, paragraph 62 m.) Although there was no allegation that the suggested answers were false, the court below both characterized the activity as "the deliberate preparation of perjured testimony and concluded that the activity exceeded the scope of their quasi-judicial immunity." (Abstract A.P.A. n.9). This was a clear misstatement of the allegations as set forth in plaintiff's complaints and as such the determination that the prosecutor's actions herein described exceeded the scope of their immunity was erroneous.

either a legal or unfounded prosecution. Yet, it cannot be denied that prosecution is perhaps the most fundamental of all the duties of a prosecutor, *Kostal* v. *Stoner*, 292 F. 2d 492, 493 (10th Cir. 1961), and as such, would clearly fall within his quasi-judicial immunity. Thus, to state a cause of action, plaintiffs should have alleged an action in furtherance of the prosecution which falls outside the cloak of immunity. Plaintiffs, however, made no such allegation.

The Seventh Circuit impliedly recognized this requirement in *Cawley* v. *Warren*, 216 F. 2d 74 (7th Cir. 1954) where that Court granted immunity to a state's attorney and his assistant where it had been alleged that they had conspired, with others, with knowledge that the plaintiff had committed no violation of the law, to deprive the plaintiff of Civil rights by procuring indictments without competent witnesses' evidence, thereby causing plaintiff's arraignment and incarceration. The court in *Cawley* relied, at p. 75, on this Court's decision in *Bradley* v. *Fisher*, 80 U.S. (13 Wall.) 335 (1871) wherein it was stated:

> "For it is a general principal of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself." 80 U.S. (13 Wall.) at 347.

Moreover, the *Cawley* court further noted that "as a matter of public policy, such an injured person is without relief in a civil proceeding." 216 F.2d at 77.

Nevertheless, the Seventh Circuit has abruptly and completely changed this public policy. Henceforth, in the

Seventh Circuit, prosecutors will be forced to defend themselves each time a defendant in a criminal case feels aggrieved by the action taken against him and alleges such action to be part of a conspiracy (which could conceivably include most cases where charges have either been dropped or the defendant acquitted). Such a state of affairs will do little to foster the freedom of the prosecutor to act upon his own convictions (*Bradley* v. *Fisher, supra*), nor will the opinion of the Court of Appeals encourage the desire for vigorous prosecution sorely needed today in many areas of this nation.

To hold, as did the court below, that an unfounded prosecution will leave the prosecutor without immunity for his acts, will thus eliminate, *in toto*, both immunity of the 1871 Civil Rights Act, and the unfettered discretion which prosecutorial immunity had been formulated to advance.

III.

SUBSTANTIAL PUBLIC POLICY CONSIDERATIONS REQUIRE A DETERMINATION BY THIS COURT AS TO THE SCOPE OF PROSECUTORIAL IMMUNITY UNDER THE 1871 CIVIL RIGHTS ACT.

Among the various arguments generally advanced in support of immunity are: (1) the theory that the official owes a duty to the public and not to the individual; (2) the danger of influencing public officials by threat of a lawsuit; (3) the drain on the valuable time of the official caused by insubstantial suits; and (4) the unfairness of subjecting officials to liability for the acts of their subordinates. *Robichaud* v. *Ronan*, 351 F.2d 533, 535 (9th Cir. 1965); Comment. 66 Harv. L. Rev. 1285, 1295, n.4 (1953). The thrust of all these arguments is singular: that

the threat of civil liability might deter a prosecutor from performing his duties.

That participation in the investigation of crimes has traditionally been among the duties of the prosecutor cannot be questioned. See, Wright, *Duties of a Prosecutor*, 35 Conn. B.J. 293, 296 (1959). In fact, the District Court in the instant case noted that there was an absence of sufficient allegations that the defendants had "engaged in investigatory conduct other than that necessary to carrying out their duties in the judicial function." *Hampton v. City of Chicago*, 339 F. Supp. 695, 699 (N.D.Ill. 1972). Among the traditional duties that are investigatory in nature are: (1) participation in grand jury investigations, (2) gathering evidence in preparation for trial and seeking assistance from police in this regard; (3) advising police as to both the legality of a proposed investigation and the proper scope thereof; (4) determining the necessity, scope and legality of seeking a search warrant; and (5) the approval of the adequacy of evidence prior to seeking a search warrant in all felony cases.

However, limiting the immunity of prosecutors to those activities which are quasi-judicial in nature will have the effect of severely circumscribing the freedom of the prosecutor to act in the above mentioned situations. In the instant case, for instance, petitioners Hanrahan and Jalovec have been held to have lost their immunity for acts described by the Seventh Circuit as having "planned a raid in order to obtain evidence of criminal activity." Henceforth, prosecutors in the Seventh Circuit and similarly in the Ninth Circuit might refuse to advise or assist police authorities, and will undoubtedly hesitate to initiate action and direct additional investigations.

It has not been questioned that such activities are traditional actions of a prosecutor. And indeed, such investigatory actions are necessary, for a prosecutor is expected to have weighed all facets of a case prior to bringing a charge. Yet again, under the view of the Seventh and Ninth Circuits, while the prosecutor is authorized and encouraged to perform all his duties conscientiously, he will be afforded immunity only when performing a select few. To artificially compartmentalize the activities is indeed unrealistic in practice, *Gaito* v. *Strauss*, 249 F. Supp., 923, 931 (W.D.Penn. 1966) aff'd. on other grounds 368 F.2d 787 (3rd Cir. 1966) (where the District Court expressly rejected the *Robichaud* quasi-judicial/investigative test) and in theory.

Moreover, the difficulty of utilizing the quasi-judicial/investigative test is compounded by the fact that the prosecutor must now determine, prior to acting, whether his action will be considered quasi-judicial or investigative. The hesitancy, delay, and perhaps outright refusal to act cannot be said to advance an effective system of law enforcement.

There can be no question that the divergence of opinions among the circuits is an issue which requires an ultimate determination by this Court. If prosecutors, having undertaken investigatory activities, are to lose their immunity from civil suit, let that be the law in all the land, not just the law in the Seventh and Ninth Circuits. And conversely, if prosecutors are to retain immunity for all actions performed within the scope of their jurisdiction, as this Court has held regarding judges and legislators, the time is ripe to alleviate this added burden from the prosecutors in the aforementioned circuits.

The public policy considerations advanced above are equally applicable as regards the Seventh Circuit's apparent elimination of immunity in situations where an unfounded prosecution has been alleged. To allow an aggrieved defendant in a criminal case to force a prosecutor to defend not only on the basis of the prosecution itself, but, in addition, to defend all incidents of that prosecution—i.e. arrest and incarceration—neither advances the freedom of discretion necessary in the performance of his prosecutorial duties, nor comports with the goal of advancing the effective administration of justice.

The prosecutor must, in the performance of his duties, serve the public interest—not his own. To require the prosecutor to act at his own peril, to evaluate the propensity of a given defendant to challenge his decision in a civil trial, or to hesitate or refuse to act because of potential civil liability, is clearly a derogation of his public duties. Yet, this is precisely the effect of the broad sweep of the decision below.

CONCLUSION.

The positions of the Petitioners herein present issues not only fundamental to the further conduct of this cause, but, in addition, involve questions of striking public importance. There now exists both a conflict among the Circuits as to the manner in which the scope of prosecutorial immunity is to be tested and an apparent conflict as to whether prosecutors will be immune from suits alleging unfounded prosecutions. Petitioners respectfully submit that the restrictive construction of prosecutorial immunity taken by the Seventh Circuit is both erroneous and an unreasonable limitation upon prosecutorial discretion.

For these reasons, Petitioners submit that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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November 23, 1973

CORRECTED

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1972 — APRIL SESSION, 1973

No. 72-1277
IBERIA HAMPTON, Administratrix, etc.
VERLINA BREWER, etc., and
DEBORAH JOHNSON, et al.,
Plaintiffs-Appellants,
v.
THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS and EDWARD V. HANRAHAN, et al.
Defendants-Appellees.
No. 72-1300
FANNIE MAE CLARK, Administratrix of the Estate of Mark Clark, Deceased,
Plaintiff-Appellant,
v.
THE CITY OF CHICAGO, EDWARD V. HANRAHAN, et al.,
Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
70 C 1384
70 C 3026
70 C 3029
70 C 2371
J. SAM PERRY, *Judge.*

ARGUED APRIL 6, 1973 — DECIDED AUGUST 24, 1973

Before FAIRCHILD, STEVENS and SPRECHER, *Circuit Judges.*

STEVENS, *Circuit Judge.* Plaintiffs allege that 14 Chicago police officers raided an apartment at 2337 West Monroe Street at 4:15 A.M. on December 4, 1969, for the purpose of killing Mark Clark and Fred Hampton and

punishing seven other residents of the apartment because they were black and had exercised their First Amendment rights as members of the Black Panther Party. They also allege that 15 other defendants conspired to imprison and prosecute seven surviving occupants without any legal basis whatsoever. In four separate complaints, containing a total of 49 counts, plaintiffs claim actual and punitive damages under the Federal Civil Rights Act and Illinois law. Accepting the allegations as true, as the law requires, the district court denied motions to dismiss filed by the fourteen participating officers,[1] but entered a final judgment dismissing all claims against the remaining 15 defendants. Plaintiffs appeal from that judgment.[2]

The appellees include: (1) The State's Attorney (Hanrahan) and three Assistant State's Attorneys (Jalovec, Sorosky and Meltreger); (2) seven police officers who participated in certain investigations after the raid;[3] (3)

[1] With respect to the motions to strike and dismiss of defendants James Davis, Daniel Groth, Edward Carmody, John Ciszewski, Ray Broderick, George Jones, John Marusich, Lynwood Harris, Fred Howard, William Corbett, William Kelly, Philip Joseph, Joseph Gorman and Robert Hughes, the district court stated: "These police officers of the City of Chicago were detailed and/or on detached service with the Office of the Cook County State's Attorney as State's Attorney's police or detail. This group of policemen is charged in all four of the consolidated complaints with actual on-the-scene participation in the raid on the Monroe Street apartment occupied by Fred A. Hampton, Mark Clark, Verlina Brewer, Deborah Johnson, Ronald Satchel, Harold Bell, Blair Anderson, Brenda Harris and Louis Truelock. Plaintiffs charge illegal and forced entry of the apartment and the unjustifiable use of excessive and deadly force by these officers acting under color of law. In the various complaints these policemen are charged with killing Fred Hampton in the presence of his fiance, Deborah Johnson, with killing Mark Clark, with wounding plaintiffs Satchel, Anderson and Harris, and with physically and verbally abusing and illegally arresting plaintiffs Brewer, Johnson, Satchel, Bell, Anderson, Harris and Truelock. They are also charged with conspiracy and conspiracy in connection with alleged and malicious prosecutions [sic]. These allegations and others are set forth in detail in the various complaints. As to certain of the allegations made in the complaints against these defendants, the court is of the opinion that there are questions of fact and of law that cannot be resolved except upon trial." 339 F.Supp. 695, 700-701 (N.D. Ill. 1972).

[2] The district court consolidated the four cases. His order of dismissal directed the plaintiffs to file amended complaints against the 14 participating officers and expressly determined that there was no just reason for delay in entering final judgment in favor of the 15 appellees; the order is therefore appealable. The appeals have been consolidated in this court.

[3] John Mulchrone, Harry Ervanian, John Meade, Robert Kukowinski, David Purtell, Charles Koludrovic and John Sadunas.

the Mayor of Chicago (Daley) and the Superintendent of Police (Conlisk); and (4) the City of Chicago and the County of Cook, municipal corporations. The district court held that the prosecutors were protected by quasi-judicial immunity, that the allegations against the appellee police officers, Mayor Daley and Superintendent Conlisk were insufficient, and that the City and County were not "persons" within the meaning of the federal civil rights statutes and are immune from liability on a respondeat superior theory. In three of the cases jurisdiction stems from the federal questions which are raised; in the fourth, plaintiff Brewer is a citizen of Michigan and therefore diversity jurisdiction is also asserted.

For the purposes of this appeal we must assume that all of plaintiffs' allegations are true. The test of sufficiency is whether ". . . it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Conley* v. *Gibson*, 355 U.S. 41, 45-46.[4] Since different issues are raised with respect to different appellees, we consider the relevant allegations separately.

In view of the large number of claims asserted, and the fact that the district court order requires all pleadings to be amended, we limit our review, with respect to each appellee, to the question whether *any* sufficient claim for relief has been alleged. Since reversal as to any appellee on any theory renders the district court's other rulings respecting that appellee subject to revision at any time prior to the conclusion of the entire trial, see Rule 54(b) Fed. R. Civ. P., it would be inappropriate to discuss the sufficiency of claims which may be amended and which need not be passed upon in order to determine this appeal.

1. *Hanrahan and Jalovec.* The Hampton complaint alleges that "under color of state search warrant" 14 police officers illegally entered the residence of Fred

[4] Despite the City's suggestion to the contrary, we must ignore what it describes as "several contradictory facts made a matter of public record" in the state criminal prosecution of defendant Hanrahan; cited at page four of the City's brief as *People* v. *Hanrahan*, Circ. Ct. of Cook County No. 71 Cr. 1791. A finding in favor of defendants in that case is clearly no bar to this action since none of these plaintiffs is a party to that judgment.

Hampton and, without provocation, fired over 90 bullets from machineguns, pistols, shotguns and carbines into the general living quarters, critically wounding Fred Hampton, who was otherwise physically abused and ultimately died. In addition, the officers allegedly stole or damaged Hampton's personal property and destroyed evidence of their illegal conduct. These alleged acts were "perpetrated upon Fred Hampton, Chairman of the Illinois Black Panther Party, because of his beliefs, thoughts, words and associations" (¶ 21) in order "to create fear and terror in the Black Community" (¶ 23).

Hampton's administratrix alleges that Hanrahan and Jalovec, with the 14 officers, planned the raid and agreed to use excessive and deadly force against Hampton and others in his residence. Their alleged purpose was to deprive him of his constitutional rights because of his race and his political beliefs.

The Clark complaint tersely alleges that the officers shot and killed Mark Clark without any authority of law and thereby denied him due process of law by imposing summary punishment of death upon him. It alleges that defendant Hanrahan, or his Assistant State's Attorney, did "with specific intent, plan and execute the acts as alleged herein" (¶ 16); further, that these acts were the result of a tacit understanding "to treat the deceased as they did because he was Black."

The Johnson and Brewer complaints describe the raid in greater detail. They allege that four of the plaintiffs[a] were wounded by gun fire and that all of them were physically and verbally abused and illegally arrested. Again the complaints allege that Hanrahan and Jalovec, as well as the 14 officers, "wilfully, maliciously, and with specific intent planned and executed the acts" recited in the complaints. These complaints also include a number of counts alleging state law claims of false imprisonment and malicious prosecution; these charges also involve defendants Hanrahan and Jalovec but will be discussed in Part 2 of this opinion.

[a] Satchel, Anderson, Harris and Brewer.

As the district court correctly held, the allegations are plainly sufficient to state claims against the participating officers under the Federal Civil Rights Act, 42 U.S.C. §§ 1983 and 1985(3). It is equally clear that the allegations respecting the planning and execution of the raid by Hanrahan and Jalovec are sufficient unless their prosecutorial offices gave them immunity.

The district court erroneously relied on the Illinois Tort Immunity Act.* Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 or § 1985(3) cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced. See *McLaughlin* v. *Tilendis*, 398 F.2d 287, 290 (7th Cir. 1968). The immunity claim raises a question of federal law.

The claim of immunity must not be confused with the defense of good faith. That defense is available to a person who, either because of his position or because of his conduct, is not immune from suit. See *Pierson* v. *Ray*, 386 U.S. 547, 557. In those situations in which immunity is properly claimed, the action is defeated at the outset. An essential purpose of the doctrine is to give the officer freedom to exercise his discretion and to perform his official duties without fear that his conduct will be called into question at an evidentiary hearing or subject him to personal liability.

The source of the immunity is found in common law doctrine recognized in federal judicial decisions. The Supreme Court has squarely held that the broad language of the Civil Rights Act of 1871 did not abolish this protection for legislators "acting in a field where legislators traditionally have power to act," *Tenney* v. *Brandhove*, 341 U.S. 367, 379, or for judges for acts "within their judicial jurisdiction . . . even when the judge is accused of acting maliciously and corruptly. . . ." *Pierson* v. *Ray*,

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*Ill. Rev. Stat. 1969, Ch. 85, §§ 1-101, *et seq.*

386 U.S. 547, 554.[7] With respect to legislators and judges, it is clear that the doctrine may not be circumvented by allegations of improper motive; rather, the availability of immunity depends on the character of the conduct under attack.

The scope of immunity enjoyed by a state prosecutor has not yet been defined by the Supreme Court. We are nevertheless confident that at least some of his traditional functions must be immune from suit under § 1983. See *Littleton* v. *Berbling*, 468 F.2d 389, and cases cited at page 409 (7th Cir. 1972). In view of the overriding importance of federal law, the area of his protection cannot be either limited or expanded by a state's statutory definition of his authority or responsibility; we therefore do not pause to review the respective parties' analyses of the relevant Illinois statute.[8] Nor do we attach any weight in analyzing the immunity question to the numerous ways in which the pleadings characterize the motivation of the prosecutor as wrongful — ranging from "sadistic" or "racial" to the more familiar "malicious" or "discriminatory." The immunity doctrine would be of little value if such characterization of his motive could force the prosecutor to stand trial.

Prosecutorial conduct which traditionally has been treated as immune is often described as "quasi-judicial" as opposed to investigatory activities normally performed by laymen, such as police officers. Judge Ely's exposition

[7] "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in *Bradley* v. *Fisher*, 13 Wall. 335 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.' (Scott v. Stansfield, L. R. 3 Ex 220, 223 (1868), quoted in *Bradley* v. *Fisher*, *supra*, 349, note, at 350). It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decison-making but to intimidation." *Id.* at 353-354.

[8] See Ill. Rev. Stat. Ch. 14, § 5.

of the distinction in *Robichaud* v. *Ronan*, 351 F.2d 533 (9th Cir. 1965) properly focuses on the character of the defendant's conduct, rather than his alleged motivation:

> "We believe, however, that when a prosecuting attorney acts in some capacity other than his quasi-judicial capacity, then the reason for his immunity—integral relationship between his acts and the judicial process—ceases to exist. If he acts in the role of a policeman, then why should he not be liable, as is the policeman, if, in so acting, he has deprived the plaintiff of rights, privileges, or immunities secured by the Federal Constitution and laws? See Monroe v. Pape, supra, 365 U.S. at 187, 81 S.Ct. 473; see also Schneider v. Shepherd, 192 Mich. 82, 158 N.W. 182, L.R.A. 1916F, 399 (1916), cited in Yaselli, 12 F.2d at 405. To us, it seems neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other." *Id.* at 536-537.

The conduct of Hanrahan and Jalovec in planning the raid may be described in various ways. At one extreme the complaints may be read to charge that they deliberately planned to have the police officers kill Hampton and Clark. Even without the allegation of improper political or racial motivation, it is plain that no immunity would apply under that reading. Regardless of his motives, the prosecutor certainly may not order subordinates to kill or to punish a free citizen without trial. Notwithstanding the tone of these complaints, however, appellants have not urged this extreme reading on the court; we therefore do not so interpret the allegations.

At the other extreme, defendants Hanrahan and Jalovec argue that they are charged with nothing more than the drafting of a search warrant which the raiding officers executed, an act which should be accepted as a traditional duty of the Attorney for the County. But we are persuaded that the "planning" allegations cannot fairly be read so narrowly. At the very least they charge that Hanrahan and Jalovec planned a raid in order to obtain evidence of criminal activity. Defendants argue that evidence gathering is so closely related to the presentation of evidence at trial that it should also be clothed with

immunity. We find this argument unpersuasive. Even though defensible if conducted in good faith with probable cause, the State's Attorney's alleged participation in the planning and execution of a raid of this character has no greater claim to complete immunity than activities of police officers allegedly acting under his direction.

The district court erred in holding that the immunity doctrine requires dismissal, without trial, of plaintiffs' charges against defendants Hanrahan and Jalovec.

2. *Mulchrone, Ervanian, Meade, Kukowinski, Purtell, Koludrovic, Sadunas, Sorosky and Meltreger.* The Johnson and Brewer complaints also allege that nine appellees, including seven police officers and two additional Assistant State's Attorneys, joined with Hanrahan and Jalovec and the 14 participating officers in an extensive conspiracy to cause the false arrest and imprisonment of the surviving plaintiffs, the institution of an unfounded prosecution, and the concealment of the truth from the public.

Several of the plaintiffs were arrested on December 4, 1969, charged with attempted murder and aggravated battery, and imprisoned until December 21, 1969; their prosecutions were continued until May 8, 1970. They allege that there was no legal basis for the arrests, the charges, or the imprisonment. Quite plainly, if the allegations are true, § 1983 authorizes relief against each person who, acting under color of state law, is responsible for these wrongs. Moreover, the conspiracy which they allege is also actionable under § 1985(3). We are satisfied that the post-raid charges against Hanrahan, Jalovec and the 14 police officers are sufficient under both § 1983 and § 1985(3). The sufficiency of the charges against the other defendants is less clear.

The complaints charge that these defendants took certain action designed to conceal the fact that there was no basis for arresting, holding or prosecuting the plaintiffs, and that the continuing concealment aggravated plaintiffs' injuries. Thus, Mulchrone and Ervanian, Supervising Officers of the Internal Inspections Division of the Chicago Police Department, allegedly limited the scope of their investigations in order to prevent information

contradicting the participating officers' version of the raid from coming to light. Defendant Meade prepared a set of questions and answers for the officers that would avoid a fair test of their veracity. Defendants Sorosky and Meltreger helped to edit these questions and answers.[9] Defendants Sadunas and Koludrovic gave false testimony at the coronor's inquest. Sadunas allegedly gave testimony before the grand jury which he knew to be false. Defendants Purtell and Sadunas allegedly filed an incomplete and erroneous firearms report — again to corroborate the official, but false, version of the raid.

The complaints allege that as a direct result of the conspiracy, the unfounded prosecution was continued until May 8, 1970, and plaintiffs incurred expenses in preparing their defense. The conspiracy charge is somewhat tenuous since it merely alleges that "some or all" of the defendants participated, and the causal connection between the conduct of several appellees and the alleged injury to plaintiffs is doubtful at best. Nevertheless, serious allegations of conspiracy have been made, and matters such as the extent of injury and causal connection raise questions for the trier of fact. Since we cannot say with certainty that there is no possibility that any set of facts which might be proved in support of the allegations would entitle one or more of the plaintiffs to some relief, it was error for the district court to enter judgment finally disposing of the claims against these defendants.

If the alleged conspiracy did exist, as we must assume at this stage of the case, and if it did prolong a completely unfounded prosecution, plaintiffs are entitled to relief against each conspirator. The vague allegation that "some or all" of the defendants were participants does not justify requiring them all to stand trial. But if *some* are in fact liable, it would be unjust to permit a final judgment to exonerate all before trial, or even discovery, has commenced. We therefore conclude that even if the

[9] The purpose of their review was allegedly to make certain that the officers would not give testimony inconsistent with previous official statements about the incident. The alleged conduct of Assistant State's Attorneys Sorosky and Meltreger clearly exceeded the scope of their quasi-judicial immunity. For, in substance, plaintiffs allege the deliberate preparation of perjured testimony.

charges against certain of the defendants may have been properly dimisssed because the allegations were deficient, it was error to enter final judgment in favor of Mulchrone, Ervanian, Meade, Kukowinski, Purtell, Koludrovic, Sadunas, Sorosky and Meltreger at this stage of the case.

3. *Daley and Conlisk.* In the Johnson and Brewer complaints, plaintiffs claim that Mayor Daley and Superintendent Conlisk are liable pursuant to 42 U.S.C. § 1986 for the consequences of the alleged conspiracy.[10] The charge, in essence, is that they had the power and authority to prevent a violation of § 1985(3) by the other defendants and failed to do so. Liability under § 1986, however, is dependent on proof of actual knowledge by a defendant of the wrongful conduct of his subordinates. In their brief, plaintiffs summarize the critical charges against Daley and Conlisk by stating that the complaints allege "that due to their positions of authority and responsibility, [they] knew of the conspiracy against the plaintiffs." Brief for Appellants at 43. We agree with the district court that those allegations are insufficient.

4. *City of Chicago and County of Cook.* The several claims against the City and the County under the Civil Rights Act were properly dismissed because these defendants are not "persons" within the meaning of the statute. See *Moor* v. *County of Alameda*, ... U.S. ....., 41 U.S.L.W. 4627, 4629-4632 (May 14, 1973). That decision makes it clear, however, that the district court had juris-

[10] Section 1986 provides:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

diction over Brewer's state law claims against the County, and presumably the City as well, on the basis of diversity of citizenship. 41 U.S.L.W. at 4634-4636.

Those claims, asserted in Counts 13, 14 and 15 of the Brewer complaint, allege common law torts of assault and battery, false imprisonment, and malicious prosecution. The district court held that these claims against the County are barred by the Illinois Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. Ch. 85, §§ 1-101, *et seq.* The district court relied primarily on *Mills* v. *County of Winnebago*, 244 N.E. 2d 65 (2d Dist. 1969).[11] Subsequent to the decision of the district court, that case was overruled *sub silentio* by *Arnolt* v. *Highland Park*, 282 N.E. 2d 144 (1972). See *Krieger* v. *Carpentersville*, 289 N.E. 2d 481, 484 (2d Dist. 1972). As we read those cases, it now seems quite clear that the Illinois statute does not immunize municipal corporations from liability if their agents are guilty of wilful and wanton misconduct. The allegations in the Brewer complaint against the City of Chicago and Cook County are therefore sufficient.

The district court dismissed parallel state law claims in the Johnson complaint on the same grounds. However, there was no diversity of citizenship in that case, and this court ruled in *Wojtas* v. *Village of Niles*, 334 F.2d 797 (7th Cir. 1964), that the doctrine of pendent jurisdiction does not permit joinder of claims against a new party. Therefore, the dismissal of the state law claims in the Johnson complaint should be for want of jurisdiction, and the lower court's order is appropriately modified.

Insofar as the district court's order of February 3, 1972, dismissed the charges against the City of Chicago and the County of Cook, it is reversed with respect to the Brewer complaint and affirmed as modified with respect to the Johnson complaint; insofar as it dismissed the charges against Mayor Daley and Superintendent Conlisk, it is affirmed; insofar as it dismissed the charges against

[11] It also cited *Fustin* v. *Board of Education of Community Unit District No. 2*, 242 N.E.2d 308 (5th Dist. 1968), and *Woodman* v. *Litchfield Community School District, No. 12*, 242 N.E.2d 780 (5th Dist. 1968).

defendants Hanrahan, Jalovec, Mulchrone, Ervanian, Meade, Kukowinski, Purtell, Koludrovic, Sadunas, Sorosky and Meltreger, it is reversed. The case is remanded to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

Iberia HAMPTON, Administratrix on behalf of the Estate of Fred A. Hampton, Deceased, Plaintiff,

v.

The CITY OF CHICAGO, COOK COUNTY, ILLINOIS, et al., Defendants.

Fannie Mae CLARK, Administratrix of the Estate of Mark Clark, deceased, Plaintiff,

v.

The CITY OF CHICAGO, a Municipal Corporation, et al., Defendants.

Verlina BREWER, by her next friend, William R. Brewer, Plaintiff,

v.

The CITY OF CHICAGO, a Municipal Corporation, et al., Defendants.

Deborah JOHNSON et al., Plaintiffs,

v.

The CITY OF CHICAGO, a Municipal Corporation, et al., Defendants.

Nos. 70 C 1381, 70 C 2371, 70 C 3026, 70 C 3029.

United States District Court, N. D. Illinois, E. D.

Feb. 3, 1972.

Consolidated civil rights actions for damages, against city, police officers and others, alleging that defendants committed acts under color of law which deprived plaintiffs of their constitutional rights. On the making of various motions by defendants, the District Court, Perry, J., held that city of Chicago is a municipal corporation and is not a "person" within meaning of the Civil Rights Act, and civil rights complaint against defendant police officers who were involved in raid upon apartment in which two persons were killed raised questions of fact and law that could not be resolved except upon trial.

Order accordingly.

1. Civil Rights ⇐13.8(3)

City of Chicago is a municipal corporation and is not a "person" within meaning of the Civil Rights Act. 42 U.S.C.A. § 1981 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

2. Civil Rights ⇐2

Civil rights statutes are aimed at individuals who subject others to deprivation of their civil rights; personal involvement is contemplated, and these statutes are not aimed at the governmental organization which employs such individuals. 42 U.S.C.A. § 1981 et seq.

3. Civil Rights ⇐13.8(3)

County was not a "person" within definition of Civil Rights Act. 42 U.S.C.A. § 1981 et seq.

4. Civil Rights ⇐13.8(3)

Damages were not recoverable against county in civil rights action by reason of doctrine of respondeat superior, based upon alleged negligent acts of state's attorney and assistant state's attorneys, where Illinois law afforded the county, as a local public entity, immunity from civil liability because of acts of its employees done in the execution or enforcement of any law or committed by employees serving in positions involving determination of policy or exercise of discretion. S.H.A. ch. 85, § 1-101 et seq.; 42 U.S.C.A. § 1981 et seq.

5. Civil Rights ⇐13.8(3, 4)

Causes of action in civil rights complaint against mayor and city superintendent of police, arising out of police raid on an apartment, could not be maintained where mayor and superintendent were not charged with any personal participation in the raid or direct infliction of injury on plaintiffs, and where there was a lack of specificity as to failure of mayor and superintendent to train and supervise police, as well as a lack of any showing that they had any immediate supervision, direction or control of other defendants who executed the search warrant. 42 U.S.C.A. § 1981 et seq.

6. Civil Rights ⇐13.8(6)

State's attorney and assistant state's attorneys, who were defendants in consol-

idated civil rights action arising out of police raid on an apartment, were immune under the Illinois Tort Immunity Act where they were, at all time., quasi-judicial officers of the state in the performance of their official duties. S.H.A. ch. 85, § 1–101 et seq.

7. Civil Rights ⊂13.8(6)

In their quasi-judicial character and function, state's attorney and assistant state's attorneys were immune from liability under Illinois law and enjoyed the same common-law immunity afforded the judiciary, which immunity was not abrogated by enactment of the Civil Rights Act. S.H.A. ch. 85, § 1–101 et seq.; 42 U.S.C.A. § 1981 et seq.

8. Civil Rights ⊂13.13(3)

In civil rights action against defendant police officers and others, sufficient showing was not made which would indicate that actions of defendant officers caused deprivation of any of plaintiff's rights arising out of raid on apartment by police in which two people were killed, where defendant officers were assigned either to crime laboratory or to the internal inspections division of the police department, so that they were not involved in the police raid and did not cause any physical injuries to any of the plaintiffs. 42 U.S.C.A. § 1981 et seq.

9. Civil Rights ⊂13.14

Civil rights complaint against defendant police officers who were involved in raid upon apartment in which two persons were killed raised questions of fact and law that could not be resolved except upon trial. 42 U.S.C.A. § 1981 et seq.

Dennis Cunningham, Francis E. Andrew, Jeffrey Haas, Jonathan M. Hyman, Kermit Coleman, Cornelius E. Toole, James D. Montgomery, Chicago, Ill., David Scribner, New York City, William J. Bender, Newark, N. J., Arthur Kinoy, New York City, for plaintiffs.

Richard L. Curry, Corporation Counsel, City of Chicago, and Benjamin E. Novoselsky, John V. Virgilio, Michael S. Jordan, Asst. Corp. Counsels, and Edward V. Hanrahan, State's Atty., of Cook County, Ill., and Vincent Bentivenga, Nicholas Trovato, Gerald Mannix, Asst. State's Attys., Chicago, Ill., for defendants.

MEMORANDUM OPINION AND ORDERS

PERRY, District Judge.

On October 22, 1971, cases numbered 70 C 1384, 70 C 2371, 70 C 3026 and 70 C 3029 were by agreement and order of this court consolidated. Said cases were ordered to proceed for all purposes thereafter under case numbered 70 C 1384.

These suits are civil actions for damages. Plaintiffs allege defendants committed acts under color of law which deprived plaintiffs of their rights, privileges and immunities as guaranteed by the First, Fourth, Fifth, Eighth, Ninth, Thirteenth and Fourteenth Amendments to the Constitution of the United States and protected under 42 U.S.C. § 1981 et seq.

All four actions grow out of a "raid" by certain Chicago policemen (assigned as State's Attorney's Police) at an apartment located at 2337 W. Monroe Street in Chicago, Illinois, occupied by members of the Black Panther Party, and out of the aftermath of that raid. Plaintiffs allege certain of the defendants herein illegally entered said apartment on December 4, 1969 and assaulted them with deadly weapons, killing Fred Hampton in the presence of plaintiff Deborah Johnson, killing Mark Clark, and causing serious bodily harm to Verlina Brewer, Ronald Satchel, Blair Anderson and Brenda Harris. Plaintiffs Brewer, Johnson, Satchel, Anderson, Harris, Harold Bell and Louis Trueluck further charge they were illegally arrested, falsely imprisoned and prosecuted wrongfully and maliciously. Sued are the Chicago police officers who participated in the raid; certain other police officers assigned to the Crime Laboratory and Internal Inspections Division of the Chicago Police Department; the State's Attorney of Cook County and three Assistant State's Attorneys; the

City of Chicago as employer of the police officers; the County of Cook as employer of the state's attorneys; the Mayor of the City of Chicago, and the Superintendent of the Chicago Police Department.

The allegations made in these four suits are voluminous, and the court in this particular memorandum and order will not attempt here to set them forth in detail, nor further attempt to summarize them. The complaint in 70 C 1384 ("the Hampton case") covers 15 pages; in 70 C 2371 ("the Clark case"), 9 pages; in 70 C 3026 ("the Brewer case"), 42 pages; and in 70 C 3029 ("the case of Johnson, et al."), 68 pages.

Various defendants in the various cases have moved to dismiss the complaints wherein they are named for failure to state a cause of action and for lack of jurisdiction. Other motions to extend time to plead and motions to stay discovery have been filed. Plaintiffs have responded to the various motions and defendants have made reply. Following consolidation of the actions, other motions were filed by defendants on November 17, 1971; and on December 15, 1971, plaintiffs filed further answer to various defendants' motions to dismiss in this consolidated cause.

The court has now reviewed the four complaints and has read and considered all the motions and all the briefs and/or memoranda of the parties in support of their respective positions. The court's memorandum and its orders follow:

As to the Motions to Strike and Dismiss of the City of Chicago:

[1] The City of Chicago is a defendant in all four consolidated cases. Jurisdiction is alleged under the Civil Rights Act (42 U.S.C. § 1981 et seq.) The City of Chicago is a municipal corporation and not a "person" within the meaning of the Civil Rights Statute. It is now well established that an action for damages will not lie against a municipal corporation on these jurisdictional allegations. Monroe v. Pape, 365 U.S. 167, 191, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961); United States ex rel. Lee v. State of Illinois, 343 F.2d 120 (7th Cir., 1965); Fisher v. City of New York, 312 F.2d 490 (2nd Cir. 1963); Spiesel v. City of New York, 239 F.Supp. 106 (S.D.N.Y., 1964); Wilcher v. Gain, 311 F.Supp. 754 (N.D.Cal., 1970).

[2] The civil rights statutes are aimed at individuals who subject others to deprivation of their civil rights and personal involvement is contemplated. They are not aimed at the city which employs them. Plaintiffs seek to hold the city liable here for the acts of its employees under the doctrine of *respondeat superior*. The theory that a municipality is liable for the failure to properly train, discipline, supervise, etc. its employees has been advanced in numerous cases in this court and elsewhere. The theory has been struck down. Salazar v. Dowd, 256 F.Supp. 220 (D.Colorado, 1966); and in this court, Down v. Daley, 69 C 1789; Williams et al. v. Barnes et al., 69 C 1942; Sanberg v. Daley, May ~ of the City of Chicago et al., 306 F.Supp. 277. Additionally, governmental entities have defenses under Chapter 85, Ill.Rev. Stats. (1969).

All of the counts in all four complaints as they relate to the City of Chicago should be stricken and the City should be dismissed from all four suits as a party defendant. It is, therefore, Ordered that the City of Chicago be and it is hereby dismissed as a party defendant in this consolidated case.

As to the Motions to Strike and Dismiss of the County of Cook, Illinois:

[3] As in the case of the City of Chicago, the county is not a "person" within the definition of the Civil Rights Act. Monroe v. Pape and other cases, supra, and Dodd v. Spokane County, Washington, 9th Cir., 393 F.2d 330.

[4] Plaintiffs, likewise, seek to recover damages against the County of Cook under the doctrine of *respondeat superior* based upon the alleged negligent acts of the State's Attorney of Cook County and certain Assistant State's Attorneys. The Illinois Local Governmental and Govern-

mental Employees Tort Immunity Act (Ill.Rev.Stats.1969, Chap. 85, § 1–101 et seq.) affords the County, as a local public entity, immunity from civil liability because of the acts of its employees done in the execution or enforcement of any law or committed by employees serving in positions involving determination of policy or exercise of discretion. The acts alleged to have been committed by said employees were done in their capacities as persons serving in positions involving said policy and discretion. Fustin v. Board of Education of Community Unit District No. 2, 101 Ill.App.2d 113, 242 N.E.2d 308; Woodman v. Litchfield Community School District No. 12, 102 Ill. App.2d 330, 242 N.E.2d 780; Mills v. County of Winnebago, 104 Ill.App.2d 366, 244 N.E.2d 65.

It is, therefore, Ordered that the County of Cook, Illinois be and it hereby is dismissed as a party defendant in the Hampton, Brewer and Johnson, et al. suits wherein it is named, and that the County of Cook be and it hereby is dismissed as a party defendant in this consolidated cause.

As to the Motions to Strike and Dismiss as to Richard J. Daley, Mayor of the City of Chicago, and James B. Conlisk, Jr., Superintendent of Police of the City of Chicago.

[5] The Mayor of the City of Chicago and the City's Superintendent of Police are named as defendants in the Brewer and Johnson, et al. suits. These causes of action against these defendants cannot be maintained as they fail to state the personal, specific and factual involvement necessary to impose liability.

The civil rights statutes are premised on personal culpability, as aforesaid. The Mayor and Superintendent of Police are not charged here with any personal participation in the raid or direct infliction of injury on plaintiffs. Plaintiffs seek to hold them liable under the doctrine of *respondeat superior*. There is a lack of specificity in the complaints as to the failure of said Mayor and Superintendent to train and supervise police employees and a lack of any showing that they had any immediate supervision, direction or control of the defendants executing the search warrant. To hold them liable under the doctrine of *respondeat superior* would be contrary to the law as decided in this District and elsewhere. Sanberg v. Richard J. Daley, Mayor of the City of Chicago, Down v. Daley and Salazar v. Dowd, all supra, and Jordan v. Kelly, 223 F.Supp. 731 (W.D.Mo., 1963).

The Mayor and the Superintendent of Police also are charged with conspiracy in allegations that there was a personal failure on their part to stop an alleged conspiracy they had the power to stop. This conclusory and general allegation is not well taken. Huey v. Barloga, 277 F.Supp. 864 (N.D.Ill., 1967).

In this court's opinion there is no showing of an act or an omission in dereliction of these defendants' public responsibility.

Accordingly, the motions of Richard J. Daley, Mayor of the City of Chicago, and James B. Conlisk, Superintendent, Chicago Police Department, to strike counts in the two complaints as to them are granted and it is Ordered that said defendants be and they hereby are dismissed as defendants in this consolidated cause in their individual and official capacities.

As to the Motions to Strike and Dismiss of Edward V. Hanrahan, State's Attorney of Cook County, and Richard S. Jalovec, James Meltzer and Sheldon Sorosky, Assistant State's Attorneys.

Plaintiffs allege various acts by the State's Attorney and three Assistant State's Attorneys in violation of plaintiffs' constitutionally protected rights. Among other things, plaintiffs allege that these defendants or some of them in their official capacities planned with others the raid upon the Monroe Street apartment and that as a result of the raid Fred Hampton and Mark Clark were killed and certain others wounded; that said defendants placed charges against some of the plaintiffs after planning with others

to do so; that said defendants caused the institution of criminal proceedings against some of the plaintiffs after planning to do so with others, and that said State's Attorney and Assistant State's Attorneys continued in the alleged malicious prosecution of said charges. The State's Attorney and Assistant State's Attorneys are not charged with on-the-scene participation in the raid, which raid was conducted by certain of the other defendants.

[6] Said State's Attorney and Assistant State's Attorneys plead, among other things, their official and governmental immunity as a bar to the actions against them and their immunity from civil liability for damages arising out of the performance of their official duties. The State's Attorney and Assistant State's Attorneys were, at all times enumerated by plaintiffs, quasi-judicial officers of the State of Illinois and in the performance of their official duties. They are immune under the Illinois Tort Immunity Act, Ill.Rev.Stat. (1969), Ch. 85, § 1-101 et seq.

A part of their official duties was and is the draftsmanship of legal papers, such as a search warrant. Their official duties and responsibilities include the necessary investigation of facts and evaluation of evidence so that they can determine from such facts and evidence whether or not an offense had been committed and what offenses an accused can be charged with. Such officials are necessarily involved in the presentation of the legal aspects of a case.

[7] In their quasi-judicial character and function the State's Attorney and Assistant State's Attorneys are immune from liability herein and enjoy the same common law immunity as afforded the judiciary. This immunity has not been abrogated by the enactment of the Civil Rights Act. Bauers v. Heisel, 361 F.2d 581 (3 Cir. 1966); Kostal v. Stoner, 292 F.2d 492 (10th Cir. 1961); Bradley v. Fisher, 13 Wall. 335, 80 U.S. 335, 20 L. Ed. 646; Cawley v. Warren, 216 F.2d 74 (7th Cir., 1954); Stift v. Lynch, 267 F. 2d 237 (7th Cir. 1959); Smith v. Dougherty et al., 286 F.2d 777 (7th Cir., 1961); Agnew v. Moody, 330 F.2d 868 (9th Cir., 1964); Wise v. City of Chicago, 308 F.2d 364 (7th Cir., 1962).

Here, too, as to these particular defendants the court has found many of the allegations conclusory. There are not sufficient allegations made by plaintiffs that these defendants went outside their judicial or quasi-judicial capacities and engaged in investigatory conduct other than that necessary to carrying out their duties in their judicial function.

There is no factual showing of malice or lack of good faith conduct by the State's Attorney and three Assistant State's Attorneys individually or in the performance of their official duties. Nor is there a sufficient showing that their alleged acts or omissions were unreasonable under the circumstances.

The principle of granting immunity to prosecuting attorneys has been recognized in many cases. (Bauers v. Heisel and other cases, supra). As was said in Bauers, 361 F.2d at pages 589 and 590:

". . . we believe that both reason and precedent require that a prosecuting attorney should be granted the same immunity as is afforded members of the judiciary. The reasons are clear: his primary responsibility is essentially judicial—the prosecution of the guilty and the protection of the innocent. . . . his office is vested with a vast quantum of discretion which is necessary for the vindication of the public interest. In this respect, it is imperative that he enjoy the same freedom and independence of action as that which is afforded members of the bench. This reasoning is nearly as well established in Anglo-American law as judicial immunity itself . . ."

The motions to strike and dismiss of the State's Attorney and three Assistant State's Attorneys should be granted and it is, therefore, Ordered that said Edward V. Hanrahan, Richard S. Jalovec, James Meltreger and Sheldon Sorosky be and they hereby are dismissed as parties defendant in the complaint here named and in this consolidated cause in

both their individual and official capacities.

As to the Motions to Strike and Dismiss of John Mulchrone, Harry Ervanian, John Meade, Robert Kukowinski, David Purtell, Charles Koludrovic and John Sadunas.

These police officers were not part of the so-called State's Attorney's detail. They were policemen assigned either to the Crime Laboratory or the Internal Inspections Division of the Chicago Police Department. None of them are alleged to have actually participated in the raid on the apartment at 2337 W. Monroe Street, Chicago. Plaintiffs in the Brewer and Johnson, et al. cases allege the subsequent involvement of this group of policemen. Plaintiffs seek to involve them in alleged conspiracy to instigate and continue alleged malicious prosecution of plaintiffs.

Plaintiffs allege defendants Koludrovic and "Doe" examined the premises of the raid "falsely" in order to justify the version of the incident by the State's Attorney's detail; that defendants Mulchrone, Ervanian, Meade, Kukowinski and "Roe" intentionally modified procedures and limited questions put to the other policemen; that Sadunas and Purtell produced a false and misleading firearms report, and that Sadunas and Koludrovic testified falsely all to the same end.

This group is among those defendants alleged by plaintiffs to have conspired to deprive plaintiffs of equal protection of the law and their civil rights by alleged wrongful and malicious prosecution. In this court's opinion there is not set forth by plaintiffs the required degree of specificity as to what each of these policemen (not part of the detail) did to interfere with the constitutional rights of each affected plaintiff so as to impose liability. It appears to the court that plaintiffs are attempting to hold these defendants liable for the acts of persons other than themselves or for the failure of other persons to act.

[8] These defendants caused no physical injury to any of the plaintiffs. They are not liable under the doctrine of *respondeat superior*. Some had to do with the investigation of the need, if any, to discipline any of the other defendant police officers who attempted to execute a search warrant. They had to do in various ways with the internal police department review of the conduct of the other group of police officers. This was an internal police department matter and plaintiffs were not parties thereto. As to the matter of the laboratory tests, the defendants making the tests were public employees in the exercise of a discretionary function and there is lack of specificity as to malice or lack of performance in good faith.

There is not sufficient pleading as to these defendants and lack of sufficient showing their actions caused the deprivation of any of plaintiffs' rights.

Defendants John Mulchrone, Harry Ervanian, John Meade, Robert Kukowinski, David Purtell, John Sadunas and Charles Koludrovic are hereby dismissed as parties defendant where named in these consolidated actions and it is Ordered that they be and they are hereby dismissed as party defendants in this consolidated cause in their individual and in their official capacities.

As to the Motions to Strike and Dismiss of defendants James Davis, Daniel Grot', Edward Carmody, John Ciszewski, Ray Broderick, George Jones, John Marusick, Lynwood Harris, Fred Howard, William Corbett, William Kelly, Philip Joseph, Joseph Gorman and Robert Hughes.

These police officers of the City of Chicago were detailed and/or on detached service with the Office of the Cook County State's Attorney as State's Attorney's police or detail. This group of policemen is charged in all four of the consolidated complaints with actual on-the-scene participation in the raid on the Monroe Street apartment occupied by Fred A. Hampton, Mark Clark, Verlina Brewer, Deborah Johnson, Ronald Satchel, Harold Bell, Blair Anderson, Brenda Harris and Louis Truelock. Plaintiffs charge illegal and forced entry of

the apartment and the unjustifiable use of excessive and deadly force by these officers acting under color of law. In the various complaints these policemen are charged with killing Fred Hampton in the presence of his fiance, Deborah Johnson, with killing Mark Clark, with wounding plaintiffs Satchel, Anderson and Harris, and with physically and verbally abusing and illegally arresting plaintiffs Brewer, Johnson, Satchel, Bell, Anderson, Harris and Truelock. They are also charged with conspiracy and conspiracy in connection with alleged and malicious prosecutions. These allegations and others are set forth in detail in the various complaints.

[9] As to certain of the allegations made in the complaints against these defendants, the court is of the opinion that there are questions of fact and of law that cannot be resolved except upon trial.

Therefore, the motions of James Davis, Daniel Groth, Edward Carmody, John Ciszewski, Ray Broderick, George Jones, John Marusich, Lynwood Harris, Fred Howard, William Corbett, William Kelly, Philip Joseph, Joseph Gorman and Robert Hughes to dismiss them as parties defendant in this consolidated cause is hereby denied.

The court is hereinafter granting plaintiffs leave to file amended complaints in this consolidated cause against these defendants and said defendants are directed to answer or otherwise plead within 20 days of the filing of said amended complaints.

Further Memorandum and Orders:

The court hereinabove having dismissed certain defendants as party defendants herein, any motions filed by the dismissed parties, such as to extend time to answer or plead, or to stay discovery, now are moot and require no ruling by the court.

The court finds the four complaints filed herein do not conform to the rules of pleading. All of the complaints are broad and contain a multiplicity of bare conclusory allegations without any support in the facts alleged. The complaints are replete with descriptive phrases that are scandalous and irrelevant. The court has spent considerable time in an attempt to detail the counts to be stricken in so far as they relate to the parties being dismissed and to direct elimination, where proper, of those references to defendants already hereinabove dismissed from these cases. It has likewise considered the striking of the innumerable words and phrases which are scandalous and the striking of material which is irrelevant and which constitutes the pleading of alleged evidence. It finally became the court's opinion and conclusion that even if it were to set forth in voluminous detail all the counts or parts thereof that should be stricken in these complaints, in the end the original complaints would not be clearly readable, understandable and in a useable condition.

It is, therefore, Ordered that each and all of the four complaints filed herein be and they hereby are stricken in their entirety. Plaintiffs in each of the four consolidated cases are given leave to file an amended complaint (under the consolidated case number and title, No. 70 C 1384, Iberia Hampton, Administratrix, on behalf of the Estate of Fred A. Hampton, Deceased, vs. James Davis, et al.) within 30 days hereafter against those certain defendants not already dismissed herein as party defendants. Plaintiffs are Ordered to conform to the rules of pleading in their amended complaints. Defendants are given 20 days after the filing of the amended complaints to answer or plead thereto, as aforesaid.

The motions of the police officers remaining as defendants herein to stay discovery are denied. The court directs discovery to proceed in this consolidated cause except that no defendant remaining herein who is, or may be, under indictment in Cook County, Illinois, for charges related to the subject matter of these law suits, shall be required to make any answer to request for admissions, give any statement, answer any interrogatory or give his deposition, orally or in writing, herein until after the final

order of the Criminal Court of Cook County has been entered therein, including a final disposition thereof in the highest court to which such order may be appealable either directly or indirectly.

The court having completely adjudicated plaintiff's claims against certain parties defendant herein by granting their motions to dismiss and dismissing them as defendants herein, and, further, the court having expressly determined that there is no just reason for delay in entering final judgment as to them, it is hereby Ordered that final judgment be and the same is hereby entered herein dismissing the four actions of all the plaintiffs and this consolidated cause as to defendants City of Chicago; County of Cook, Illinois; Richard J. Daley Mayor of the City of Chicago; James B. Conlisk, Superintendent of Police of the City of Chicago; Edward V. Hanrahan, State's Attorney of Cook County; Richard S. Jalovec, James Meltreger and Sheldon Sorosky, Assistant State's Attorneys; John Mulchrone, Harry Ervanian, John Meade, Robert Kukowinski, David Purtell, Charles Koludrovic and John Sadunas.